Supreme Court, U.S.
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No. 01-1269

In the Supreme Court of the United States

CITY OF CUYAHOGA FALLS; MAYOR DON L. ROBART; CITY ENGINEER GERALD DZURILLA, AND CLERK OF COUNCIL GREGG WAGNER,
Petitioners,

v.

BUCKEYE COMMUNITY HOPE FOUNDATION; CUYAHOGA HOUSING PARTNERS, INC.; BUCKEYE COMMUNITY THREE L.P.; AND FAIR HOUSING CONTACT SERVICE, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF

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SUPPLEMENTAL AUTHORITY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

On page 17 of the City's Petition for Writ of Certiorari, the City stated that the Ohio Supreme Court had never addressed the declaratory judgment exception to the doctrine of *res judicata*. Under that exception, a case that seeks *solely* declaratory relief does not bar a subsequent action seeking coercive relief. Since the City submitted its petition, the Ohio court has considered and adopted the exception.

In *State ex rel. Shemo v. Mayfield Heights*, 95 Ohio St.3d 59 (2002), decided April 10, 2002, the Ohio Supreme Court adopted the declaratory judgment exception, relying upon *Jamestown Village Condo. Owners Assn. v. Market Media Research, Inc.*, 96 Ohio App. 3d 678 (1994), and Section 33, Comment c of the Restatement of Judgments 2d. By citing these authorities with approval, the Ohio Supreme Court impliedly approved the limitations upon the exception set forth therein, *i.e.*, that the declaratory judgment exception applies only where the first case sought *solely* declaratory relief.

Since Buckeye's state case sought both declaratory and coercive relief, the doctrine of *res judicata* remains a bar to the instant federal action. 28 U.S.C. 1738.

Respectfully submitted,

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